

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 591.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

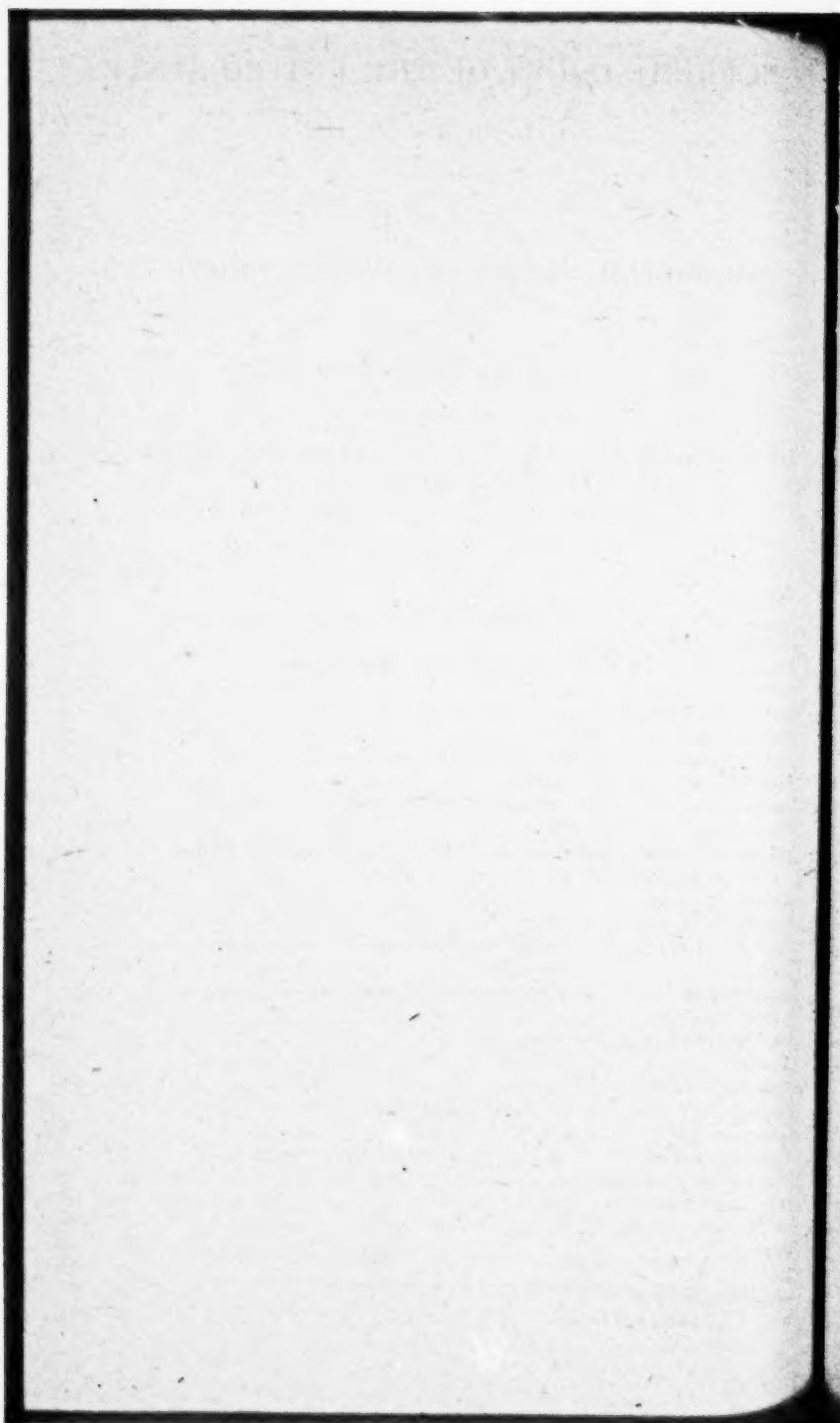
SUDA REYNOLDS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

Original. Print.

Caption.....	1	1
Transcript from the District Court of the United States for the Western District of Oklahoma.....	2	1
Citation, with acceptance of service by United States attorney.....	2	1
Bill of complaint.....	3	2
Exhibit A. Petition.....	7	5
Order to show cause, dated April 4, 1917.....	10	7
Certified copy of order to show cause, with marshal's return thereon....	11	8
Chancery subpoena, with marshal's return thereon.....	13	9
Defendant's return to order to show cause and answer to plaintiff's bill...	14	10
Final decree.....	20	14
Petition for appeal, and order allowing same and fixing supersedeas bond, endorsed thereon.....	22	16
Assignment of errors.....	23	17
Supersedeas bond on appeal.....	24	18
Defendant's precept for transcript of record, and election as to printing of record.....	25	19
Plaintiff's precept for additional portions of records to be incorporated into transcript.....	26	19
Clerk's certificate to transcript.....	27	19
Appeals.....	28	20
Appearance of counsel for appellant.....	28	20
Appearance of Mr. John A. Fain, United States attorney, as counsel for the appellee.....	28	20
Appearance of Mr. Lal D. Threlkeld, assistant United States attorney, as counsel for the appellee.....	29	20
Order of argument.....	29	21
Order of submission.....	29	21
Opinion.....	31	21
Decree.....	39	27
Certificate to transcript.....	40	27
Writ of certiorari and return.....	41	28



1 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May term, 1918, of said court before the Honorable Walter H. Sanborn, circuit judge, and the Honorable Jacob Trieber and the Honorable Frank A. Youmans, district judges.

Attest:

[SEAL.]

E. E. KOCH,

Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the fifth day of July, A. D. 1917, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Western District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein Suda Reynolds was appellant and the United States of America was appellee, which said transcript as prepared, printed, and certified by the clerk of said District Court in pursuance of an act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

2

CITATION.

In the District Court of the United States in and for the Western District of Oklahoma.

SUDA REYNOLDS, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

UNITED STATES OF AMERICA,

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States District Court for the Western District of the State of Oklahoma, wherein Suda Reynolds is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable John H. Cotteral, judge of the United States District Court for the Western District of Oklahoma, this 12th day of May, A. D. 1917.

JOHN H. COTTERAL,
Judge of the District Court.

Service of the above citation is hereby accepted this 12th day of May, 1917.

JOHN A. FAIN,
United States Attorney for the Western District of Oklahoma.

Endorsed: Filed in District Court May 12, 1917.

3 In the district court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	}	No. 221. In Equity.
<i>vs.</i>		
SUDA REYNOLDS, DEFENDANT.		

BILL OF COMPLAINT.

The United States of America, plaintiff, by John A. Fain, United States attorney for the Western District of Oklahoma, and Lal D. Threlkeld, assistant United States attorney for said district, at the request of the Secretary of the Interior and under the direction of the Attorney General of the United States, brings this, its bill of complaint, against Suda Reynolds, and complains and says:

That the defendant, Suda Reynolds, is a citizen of the United States and State of Oklahoma, and is a resident of Pottawatomie County in the Western District of the State of Oklahoma;

That the plaintiff brings this action in its own behalf and in behalf of James Washington, Walter Washington, Willie Washington, Claudius Tyner, Charlie Tyner, Mary Washington, Ella Washington, Hattie Washington Rolette, Fannie Washington Daugherty, Rose Washington McLennon, and Minnie Chisholm, heirs and only heirs of Stella Washington, deceased Absentee Shawnee Allottee No. 9, a member of the Absentee Shawnee Tribe of Indians in Oklahoma;

That herefore, to wit, on or about the 6th day of February, A. D. 1892, United States of America, by and through its proper officers and agents, and pursuant to treaty and the act of Congress ratifying the same, caused to be deposited in the General Land Office of the United States a schedule of allotments of land, dated the 7th day of August, 1891, from the Acting Commissioner of Indian Affairs, approved by the Secretary of Interior on the 16th day of September, 1891, whereby it was shown that under the provisions of the act of Congress approved February 8, 1887 (24 Stat., 388), as amended by the act of Congress of March 3, 1891, Stella Washington, Absentee Shawnee Allottee No. 9, had been allotted the following described land, to wit:

The northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north of range five (5) east I. M., Pottawatomie County, Oklahoma;

That upon said day, to wit, the 6th day of February, 1892, a trust patent was issued to the said Stella Washington for said tract of

land, containing a provision under the law then in force, that the United States of America did and would hold the land thus allotted in trust for the said Stella Washington and, in case of her death, for her heirs, for a period of twenty-five years, at the expiration of which time the United States would convey the same by patent in fee to said Indian, or her heirs, as aforesaid, unless said trust period had been by the President of the United States extended for a longer period, discharged of said trust and free of all charges and incumbrances whatsoever;

That thereafter, to wit, on or about the ----- day of -----, 1911, the said Stella Washington departed this life, leaving as her only heirs at law under the statutes of the State of Oklahoma the following-named parties and individuals, to wit: James Washington, Walter Washington, Willie Washington, Claudius Tyner, Charlie Tyner, Mary Washington, Ella Washington, Hattie Washington Rollette, Fannie Washington Daugherty, Rose Washington McLennon, and Minnie Chisholm, which fact was so found and adjudged by the Secretary of the Interior under the law then in force;

That, as such heirs and only heirs of the deceased allottee aforesaid, the above-named parties inherited of and from said allottee the northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north of range five (5) east I. M., Pottawatomie County, Oklahoma, which said tract of land the United States of America still holds in trust for the said heirs of the deceased allottee under and by virtue of the fact that Honorable Woodrow Wilson, President of the United States, did, on November 24, 1916, by Executive order duly made and proclaimed, and in pursuance of the acts of Congress hereinbefore referred to, extend for a period
5 of ten years the trust period so described and set out in the trust patent hereinbefore referred to.

That thereafter, and on or about the 17th day of February, 1917, Claudius Tyner, one of the heirs aforesaid, attempted to sell and convey his undivided one-eleventh interest in the above-described tract of land to the defendant, Suda Reynolds, and pursuant thereto did make and deliver a purported warranty deed of conveyance, purporting to convey said undivided interest to the defendant, Suda Reynolds.

That the said purported conveyance was filed for record in the office of the register of deeds (now county clerk) of Pottawatomie County, Oklahoma, on the 18th day of April, 1917.

Plaintiff alleges that said conveyance is null and void and of no force and effect, because of the fact that the title is held in trust by the plaintiff so as aforesaid, and the restriction of twenty-five years as extended has not expired, and the honorable Secretary of the Interior has not approved said attempted conveyance.

Plaintiff alleges that thereafter, to-wit, on or about February 26, 1917, the said defendant, Suda Reynolds, by and through her attorneys, Goode & Johnson, filed in the office of the clerk of the Superior Court of Pottawatomie County, State of Oklahoma, her peti-

tion asking that the land hereinbefore described be partitioned and that the undivided one-eleventh interest purporting to have been purchased by her from the said Claudius Tyner be set off to her in severalty, and is at this time, by and through her attorneys aforesaid, prosecuting said action. A copy of said petition is filed herewith as a part hereof, and marked "Exhibit A";

Plaintiff alleges that the purported conveyance hereinbefore mentioned, and the record thereof, and the claim and suit of the defendant as the owner thereof, constitutes a cloud upon the title of the plaintiff and likewise of said heirs at law, and prevents and will prevent the plaintiff from conveying said land to the aforesaid heirs by good and sufficient patent in fee simple, discharged of the trust, and free of all charges and incumbrances whatsoever, unless this said pretended conveyance is cancelled and held for naught; and further

that by the wrongful act of the defendant in securing said
6 purported conveyance and in filing and prosecuting the action now pending in the Superior Court of Pottatomie County, Oklahoma, the plaintiff, its agents and officers, are resisted, restricted, and interfered with in the control and management of said tract of land and keeping the same for the use of said Indian heirs as it is the purpose and duty of the Government to do, and are thereby hindered in performing its duties and executing the laws and treaties with respect thereto.

Wherefore, to the end that plaintiff may have the relief to which it is entitled, and which it can only obtain in a court of equity, there being no adequate remedy at law, and that said defendant may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by plaintiff the plaintiff prays this honorable court that the said conveyance mentioned be set aside, annulled, cancelled, and held for naught; and that said defendant be further restrained and enjoined from setting up any claim, lien or title, or claiming any estate, right, title or interest in or to the said allotment above described, or to the possession of said tract of land, or any part thereof; and that plaintiff be decreed to be the owner thereof for the purposes aforesaid, and entitled to the possession of said tract of land, subject only to the rights of the said heirs, to-wit, James Washington, Walter Washington, Willie Washington, Claudius Tyner, Charlie Tyner, Mary Washington, Ella Washington, Hattie Washington Rolette, Fannie Washington Daugherty, Rose Washington McLennon, and Minnie Chisholm; and that the said defendant, her agents and servants, be enjoined from any other or further conveyance of said land, or the occupation thereof and from negotiating with or procuring from said heirs any other or further deed, mortgage, contract or conveyance, or incumbrance of any kind or character touching any of the undivided interests of said land, or any part of the same, except such as may be approved by the honorable Secretary of the Interior; and that said defendant, her agents and servants, until the final trial of this cause, be restrained and enjoined from in any way or manner further prose-

cuting her said action now pending in the Superior Court of Pottawatomie County, State of Oklahoma, seeking to have said land partitioned and divided in severalty, and from in any way or manner interfering with the control of said land by the United States Indian superintendent duly accredited with authority there-
 7 over; and that the plaintiff may have such other and further relief in the premises as the nature, facts and circumstances of the case may require; and that upon the trial of this cause this injunction be made perpetual; and may it please your honor, if the defendant fails to plead hereto voluntarily, to grant this plaintiff a writ of subpoena directed to the said Suda Reynolds, commanding her at a certain time and under a certain penalty thereunder to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and to stand, perform, and abide by such other direction, and decree as may be made against her in the premises as shall seem meet and agreeable to equity; that the plaintiff recover from said defendant its costs herein expended, and such other and further relief as to the court seems just and equitable.

JOHN A. FAIN,
United States Attorney.

-----,
Assistant United States Attorney.

EXHIBIT A.

STATE OF OKLAHOMA, POTTAWATOMIE COUNTY, ss:

In the Superior Court in and for the said county and State.

SUDA REYNOLDS, PLAINTIFF,

vs.

JAMES WASHINGTON, WALTER WASHINGTON, CLAUDIUS Tyner, Charlie Tyner, Mary Washington, Ella Washington, Hattie Rolette, Fannie Daugherty, Rose Washington McClennon, Willard Johnston, guardian of Willie Washington, a minor, Minnie Chisholm, a minor, and Henry Chisholm, defendants.

Petition.

Comes now the plaintiff and for cause of action against the defendants, alleges and states:

8 1st. That she is the owner of the legal and equitable title to an undivided 1-11 interest in and to the following described real estate, to wit: The northwest quarter of the southwest quarter of section 31, township 11, north, range 5 east of the I. M. in Pottawatomie County, Oklahoma, containing [forth] acres.

2nd. That she is the owner of such interest under and by virtue of

a warranty deed executed on the 7th day of December, 1916, by Claudius Tyner conveying said interest unto this plaintiff; that said described tract of land was allotted to one Stella Washington, as a member of the Absentee band of Shawnee Indians, and said allotment was approved on the 16th day of September, 1891, and by the terms of said allotment the same was held in trust for the said Stella Washington, or her rightful heirs in the case of her decease, for a period of twenty-five years; that said period expired September 17th, 1916, and at the expiration thereof the same was vested in fee simple in the said Stella Washington or her heirs.

3rd. That the said Stella Washington died in Pottamatomie County on the ---- day of -----, 1911, and her estate has been fully administered and all debts and obligations chargeable thereto fully paid and satisfied. That the said Stella Washington was married to one Wakolle but prior to her death the said Stella Washington obtained a divorce because of the fault of the said Wakolle from her said husband and at her death left no surviving husband and no children, or issue of any children, nor father nor mother; that she left surviving eleven brothers and sisters, each of whom inherited an undivided 1-11th part of said described tract of land, to wit: James Washington, Walter Washington, Willie Washington, a minor, whose legal guardian is Willard Johnston, of Shawnee, Oklahoma, Claudius Tyner, Charley Tyner, Mary Washington, Ella Washington, Hattie Rolette, formerly Hattie Washington, Fannie Washington, formerly Fannie Washington, Rose Washington, who since the death of Stella Washington has intermarried with one McLennon, and Nannie Washington, who thereafter cohabited with one Henry Chisholm, and by whom she had one child, to wit: Minnie Chisholm; that the said Nannie Washington died on the ---- day of -----, 1914, unmarried and without issue save the said Minnie Chisholm.

9 4th. That each and all of the above-named persons was vested with an undivided 1-11th interest in the said real estate as above set forth with the exception of the said Nannie Washington, whose interest descended to her heirs, and affiant alleges that Minnie Chisholm is her sole and only heir; that the said Minnie Chisholm is a minor and has no legal guardian appointed for her person or estate; that each and all of said defendants are tenants in common with plaintiff in said premises and no other person has any interest or lien in or right to said premises, and this plaintiff is entitled to receive a distributive share of said above-described land and desires the same to be set off to her in severalty.

5th. That by reason of the number of heirs and their interests therein it will be impracticable to partition or set off the interest of each in said premises.

Wherefor plaintiff prays the court that partition may be made of said land and her interest be set off to her in severalty.

GOODE & JOHNSON,
Attorneys for the Plaintiff.

3300.

COPY.

SUDA REYNOLDS

vs.

JAS. WASHINGTON.

PETITION.

Filed in Superior Court February 26, 1917, Pottawatomie County, Oklahoma, R. L. Flynn, court clerk.

GOODE & JOHNSON,
Attorneys for Plaintiff.

Endorsed: Filed in District Court April 4, 1917.

10

ORDER TO SHOW CAUSE.

Upon presentation and consideration of the bill of complaint in the above-entitled suit, and further good cause shown, it is ordered that the above-named defendant, Suda Reynolds, be and appear in this court at Oklahoma City, Oklahoma, on the 11th day of April, 1917, at the hour of nine o'clock a. m., then and there to show cause, if any she can, why a writ of injunction should not issue in this cause, enjoining and restraining said defendant, Suda Reynolds, her agents, servants, and employees, from in any manner or by any means interfering with the complete and exclusive control by the plaintiff, through its agents and officers, of the following described land, to wit:

The northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north, of range five (5) east, I. M., Pottawatomie County, Oklahoma, and enjoining her, her agents, servants, and employees from interfering with the superintendent and special disbursing agent of the Shawnee Indian agency in the performance of his duties with respect to said land;

That a copy of said bill of complaint be served upon the defendant in this case, together with a copy of this order, certified under the hand of the clerk and seal of this court, by the United States marshal of this district, or by some person acting on behalf of the plaintiff, and if such service is made by a person other than said marshal proof of such service shall be by affidavit of the server filed herein.

Dated this 4th day of April, 1917.

JOHN H. COTTERAL,
District Judge.

Endorsed: Filed in District Court April 4, 1917.

11 SUDA REYNOLDS VS. UNITED STATES OF AMERICA.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

SUDA REYNOLDS, DEFENDANT.

No. 221. In Equity.

ORDER TO SHOW CAUSE.

Upon presentation and consideration of the Bill of Complaint in the above entitled suit, and further good cause shown, it is ordered that the above-named defendant, Suda Reynolds, be and appear in this court at Oklahoma City, Oklahoma, on the 11th day of April, 1917, at the hour of nine o'clock a. m., then and there to show cause, if any she can, why a writ of injunction should not issue in this cause, enjoining and restraining said defendant, Suda Reynolds, her agents, servants, and employees, from in any manner or by any means interfering with the complete and exclusive control by the plaintiff, through its agents and officers, of the following described land, to-wit:

The northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north of range five (5) east I. M., Pottawatomie County, Oklahoma, and enjoining her, her agents, servants, and employees, from interfering with the superintendent and special disbursing agent of the Shawnee Indian agency in the performance of his duties with respect to said land;

That a copy of said bill of complaint be served upon the defendant in this case, together with a copy of this order, certified under the hand of the clerk and seal of this court, by the United States marshal of this district, or by some person acting on behalf of the plaintiff, and if such service is made by a person other than said marshal proof of such service shall be by affidavit of the server filed herein.

Dated this 4th day of April, 1917.

JOHN H. COTTERAL,
District Judge.

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

I, Arnold C. Dolde, clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify that the foregoing is a true and correct copy of original order to show cause in Equity No. 221, United States vs. Suda Reynolds as same appears of record in my office.

Witness my hand and seal of said court at Oklahoma City in said district, this 4th day of April, 1917.

ARNOLD C. DOLDE, *Clerk.*

UNITED STATES MARSHAL'S RETURN.

United States of America, Western District of Oklahoma, ss:

Received this writ April 4th, 1917, at Oklahoma City, Okla., and executed same April 5th, 1917, at 9 miles N. E. of Shawnee, Okla., by leaving a true copy of the within writ and a duplicate of the bill of complaint with Suda Reynolds in person.

JOHN Q. NEWELL, *U. S. Marshal.*
By J. A. MULKEY, *Deputy.*

Fee \$2.00

Exp. \$5.30

\$7.30

Endorsed: Filed in District Court April 6, 1917.

13 CHANCERY SUBPOENA WITH MARSHAL'S RETURN.

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

The United States of America, to Suda Reynolds, greeting:

This is to command you and every of you, that you appear before the judge of the District Court of the United States of America for the Western District of Oklahoma, at the city of Oklahoma City in said district, to answer the bill of complaint of the United States this day filed in the clerk's office of said court in said city of Oklahoma City to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the Western District of Oklahoma to execute:

Witness, the Hon. John H. Cotteral, judge of the District Court of the United States of America for the Western District of Oklahoma, at the city of Oklahoma City in said district, this 4th day of April in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

ARNOLD C. DOLDE, *Clerk.*

Memorandum.—The above-named defendant [—] notified that unless she files her answer or other defense in the clerk's office of said court, at the city of Oklahoma City aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the bill of complaint may be taken pro confesso and a decree entered accordingly.

[SEAL.]

ARNOLD C. DOLDE, *Clerk.*

U. S. MARSHAL'S RETURN.

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

Received the within writ April the 4th, 1917, and executed
 14 the same as follows, to wit: Served on the within named Suda
 Reynolds, personally, at 9 miles NE. of Shawnee, Okla., by
 leaving a true copy of the within writ with Suda Reynolds, April
 5th, 1917.

JOHN Q. NEWELL, *U. S. Marshal.*
 By J. A. MULKEY, *Deputy.*

Fee, \$2.00.

Endorsed:

No. 221.

District Court United States, Western District of Oklahoma.

THE UNITED STATES

vs.

SUDA REYNOLDS.

CHANCERY SUBPENA.

Returnable April 24, A. D. 1917.

ARNOLD C. DOLDE, *Clerk.*

Filed April 6, A. D. 1917.

ARNOLD C. DOLDE, *Clerk.*

JOHN A. FAIN,

U. S. Attorney, Compt's Sol.

U. S. marshal's office, Western District of Oklahoma.

Received Apr. 4, 1917.

No. 2584, page 178.

DEPENDANT'S RETURN TO ORDER TO SHOW CAUSE AND ANSWER TO PLAINT-
 IFF'S BILL.

*To the Honorable John H. Cotteral, judge of the United States Dis-
 trict Court for the Western District of Oklahoma:*

Comes now Suda Reynolds, the defendant in the above-styled and
 numbered cause and in response to the order to show cause issued in
 this cause on the 4th day of April, 1917, and for her return and an-
 swer to said order, and to the petition of plaintiff filed herein, alleges
 and says:

15 1st. She admits that she is a citizen of the United States and of the State of Oklahoma, and that she is a resident of Pottawatomie County, in the western district of the said State.

2nd. She denies that the plaintiff brings this action in its own behalf and in behalf of the other persons named therein, and alleges specifically that the plaintiff has no interest in the subject matter of this suit and has no capacity to maintain this action.

3rd. The defendant admits that on the 16th day of September, 1891, the Secretary of the Interior approved and confirmed the allotments made to the Absentee Shawnee Band or Tribe of Indians in the State of Oklahoma, and that Stella Washington's name appeared upon said roll opposite the number 9, and that she thereby received an allotment which included the northwest quarter of the southwest quarter of of section thirty-one (31), township eleven north, range five (5), east of the Indian meridian, in Pottawatomie County, Oklahoma, and also forty acres of land in addition, the exact description of which is unknown to the respondent at this time, and that the title to the eighty acres of land thus allotted was held in trust as provided by the fifth section of the act of Congress approved February 8th, 1887 (24 Stats., 388), and says that the eighty acres so allotted was to be held in trust by the United States, as aforesaid, from the 16th day of September, 1891, until the 16th day of September, 1916, but respondent avers that the said allotment was made under and by virtue of an act of Congress approved March 2nd, 1889, and the agreement made with the Absentee Shawnee Indians, and particularly article 2 of the said agreement, approved by the act of Congress of March 3, 1891 (26 Stats., 989), et seq., which said agreement specifically provides that the allotments so made and in the process of being made should be completed and confirmed, etc., and those to be made—

“Shall be made under the same rules and regulations as to persons, locations, and area as those heretofore made, and when made, shall be confirmed. When said allotments shall be so confirmed and approved by the Secretary of the Interior, the title in such allottee shall be evidenced and protected in every particular, in the same manner and to the extent provided for in the above-mentioned

16 act of Congress. (Act of Feb. 8, 1887, supra.) * * * And provided, further, that all such allotments shall be taken on or before January 1, 1891, after which time and up to February 8, 1891, the allotting agent then on said reservation shall make allotments to those Absentee Shawnees resident in said tract of country who have failed or refused to take their allotments as aforesaid, and such allotments so made by such allotting agent shall have the same force and effect as if the selections were made by the Indians in person. And after said date of February 8, 1891, any right to allotment hereunder or by act of Congress shall be deemed waived, and forever cease to exist.”

And the defendant says that under and by virtue of the terms of the said agreement, the unallotted lands ceded thereby could not be opened to entry and settlement until the allotments were made, the

title vested in the allottees and the trust imposed, and that the President did, on the 18th day of September, 1891, issue a proclamation restoring the unallotted portion of the reservation belonging to the Absentee Shawnee Indians to the public domain and opening the same to settlement, and he declared therein that the provisional patents, otherwise the trust patents, and the patent to Stella Washington had been issued; that is to say, the President proclaimed that—

“And whereas allotments of land in severalty to the said Sac & Fox Nation, said Iowa Tribe, said Citizen Band of Pottawatomies, and said Absentee Shawnee Band of Indians have been made and approved and provisional patents issued therefor, in accordance with law and the provisions of the before-mentioned agreements with them respectively,

“And whereas all the terms, conditions, and considerations required by said several agreements made respectively with said tribes of Indians hereinbefore mentioned and of the laws relating thereto, precedent to opening said several tracts of land to settlement, have been, as I hereby declare, provided for, paid, and complied with.”

And said proclamation further provides for the opening of the unallotted lands to settlement as by said acts above mentioned provided.

4th. The defendant further admits that the date of the provisional or trust patent issued to Stella Washington, as recorded and signed in the office of the Commissioner of the General Land Office was the — day of —, 1892, and that it was in the form and of the legal effect prescribed by the fifth section of the act of February 8, 1887 (24 Stats., 388), but says that the trust period began to run from the date of the approval and confirmation of the allotment, and that as a matter of law the trust patent, although issued at a later date, upon its issuance became effective from and after the date of the confirmation of the allotment by the Secretary of the Interior, to wit, the 16th day of September, 1891.

5th. The defendant admits that the said Stella Washington died in the year 1911, and left as her heirs at law the following-named persons, to wit: James Washington, Walter Washington, Willie Washington, Claudius Tyner, Charlie Tyner, Mary Washington, Ella Washington, Hattie Rolette, Fannie Daugherty, Rose McLennon, and Nannie Washington, and says that said Minnie Chisholm mentioned in the plaintiff's petition was not in existence at the time of the death of the said Stella Washington, but was born long afterwards, but that she is in truth and in fact the illegitimate child of the said Nannie Washington, and as such inherited such interest as her mother had in the estate of Stella Washington.

6th. The defendant admits that the above-named persons are the only heirs of the said Stella Washington, deceased, and as such have inherited from the said allottee the northwest quarter of the south-

west quarter of section thirty-one, township eleven north, range five east of the I. M., but specifically denies that said land is held in trust by the United States, since the 16th day of September, 1916.

7th. The defendant specifically denies that the President of the United States did on November 14th, 1916, or at any other time, extend for a period of ten years the trust period upon the above described allotment, and specifically denies that he attempted to do so, or that he did or performed any act or thing for the purpose of extending the trust period on said land, and the defendant further says that the President of the United States could not lawfully make any order extending the trust period mentioned for the reason that the same had expired prior to November 14, 1916.

18 8th. The defendant admits that on the 24th day of November, 1916, the President of the United States issued the following order:

"It is hereby ordered, under authority contained in section 5 of the act of February 8, 1887 (24 Stats., 388-9), that the trust periods on the allotments of the Absentee Shawnee and Citizen Pottawatomie Indians in Oklahoma, which trust expires during the calendar year 1917, be, and is hereby, extended for a period of ten years from the dates of expiration, with the exception of the following:"

And that the above and foregoing is followed by a number of allotment numbers and names, and that the name of Stella Washington does not appear in the list, but this defendant says that said order did not contemplate the allotments of deceased persons, or lands inherited from allottees, and, further, that the President of the United States by such order did not extend the trust period for the reason that the same was ended, and he could not reimpose it upon the lands of any Indian, and especially upon the lands involved in this suit.

9th. The defendant admits that on the 17th day of February, 1917, Claudius Tyner, one of the heirs above mentioned, for a good and valuable consideration, sold and conveyed his undivided one-eleventh interest in and to the above-described land to the defendant, and the same was evidenced by a warranty deed of the said date, and this defendant says that she is in possession of the said land as a cotenant with the other ten heirs under and by virtue of the said deed, and she specifically denies that the said conveyance is void and of no effect, but alleges it to be a good and valid conveyance, and defendant avers that the date of the said deed as set out in the plaintiff's petition, to wit, the 7th day of December, 1916, is erroneous, and that the true date is the 17th day of February, 1917.

10th. The defendant admits that on the 26th day of February, 1917, she brought a suit in the superior court in and for Pottawatomie County, Oklahoma, in partition, and says that each and all of the heirs, with the exception of Minnie Chisholm, a minor, agreed to the said proceeding, for the reason that they desired to sell said land, and believing that a judgment in said cause would quiet the title and

enable them to obtain a reasonable compensation for the said land, and that the same was of no value to them in common.

19 11th. The defendant specifically denies that her deed is a cloud upon the title of the United States, or upon the title of their heirs at law, or that it will prevent or does prevent the plaintiff from doing its duty in the premises, and executing a patent in fee simple as it is in duty and honor bound to do, and specifically denies that the suit that she has filed in the Superior Court of Pottawatomie County, Oklahoma, is interfering with the United States, or with the duty of any of its officers, but alleges the facts to be that its officers are attempting to deprive this defendant of her vested interests and that this suit is brought for the purpose of harassing the defendant and the heirs of the said deceased, Stella Washington, and the same is being maintained because the United States, by its proper officers, is refusing to do that which it is in honor bound to do, and which the faith of the nation is pledged to perform.

12th. Further answering, this defendant denies that the United States has any interest in the said land, or that its officers have any duty to perform, except to execute and deliver to the heirs at law a fee simple patent, showing that the title thereto is vested in them in fee simple, as it in truth and in fact became vested on the 16th day of September, 1916, and that the United States and its officers have refused to do their plain duty in the premises, and their action in refusing to comply with the solemn covenant and agreement of the United States is causing the defendant great loss and injury, and is causing the parties for whom the United States purports to bring this suit great loss and damage, and that they are entitled to the issuance of the patent provided for under the grant of allotment made to Stella Washington.

Wherefore, the defendant prays judgment of the court decreeing the heirs of Stella Washington to be owners in fee simple of said northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north, range five (5) east of the I. M., and that this defendant is the owner of an undivided one-eleventh interest in and to said forty acres of land, and for such other and further relief as the premises justify.

MARK GOODE and

HAL JOHNSON,

Attorneys for the Defendant.

Endorsed: Filed in District Court April 18, 1917.

This cause came on for final hearing on this 4th day of May, 1917, a regular day of the March, 1917, term of the United States District Court for the Western District of Oklahoma, sitting at Oklahoma City, State of Oklahoma, and same was submitted by agreement of counsel in open court upon bill and answer, and said cause having been argued by counsel and the court fully advised in the premises,

thereupon upon a consideration thereof it is ordered, adjudged, and decreed:

That heretofore there was deposited in the General Land Office of the United States a schedule of allotments of land, dated August 7, 1891, from the Acting Commissioner of Indian Affairs, approved by the Secretary of the Interior September 16, 1891, whereby it was shown that under the provisions of the act of Congress approved February 8, 1887 (25 Stat., 388), as amended by act of Congress, approved March 3, 1891 (26 Stat., 1019), Stella Washington, Absentee Shawnee Allottee No. 9, had been allotted the following-described land:

The northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north of range five (5) east of the Indian meridian, in Pottawatomie County, State of Oklahoma; and that upon the 6th day of February, 1892, a trust patent was issued to the said Stella Washington for said tract of land, containing provisions under the law then in force that the United States of America does and will hold said land in trust for the said Stella Washington and, in case of her death, for her heirs, for a period of twenty-five years, at the expiration of which time the United States would convey said tract of land to the said Stella Washington, or, in case of her death, to her heirs, in fee, discharged of said trust and free of all charges and incumbrances whatsoever; and that the President may in his discretion extend said trust period; and that said allotment was made by law subject to said trust and to restriction against conveyance for said period from the date of said trust patent.

That the President of the United States by an Executive order dated November 24, 1916, extended said trust period as to said land for a period of ten years.

21 That the said Stella Washington died in the year 1911; that James Washington, Walter Washington, Willie Washington, Claudius Tyner, Charlie Tyner, Mary Washington, Ella Washington, Hattie Washington Rolette, Fannie Washington Daugherty, Rose Washington McLennon, and Minnie Chisholm were the lawful heirs of, and inherited from, the said Stella Washington the land herein described.

That the United States of America still holds the said land above described in trust for the heirs above named.

That on the 17th day of February, 1917, Claudius Tyner, one of the heirs aforesaid of said Stella Washington, deceased, made, executed, and delivered to the defendant, Suda Reynolds, a warranty deed purporting to convey an undivided one-eleventh interest in and to the land herein described to the said Suda Reynolds, and said deed was filed for record in the office of the county clerk of Pottawatomie County, Oklahoma, on the 18th day of April, 1917.

That said deed was made without the permission, consent, or approval of the Secretary of the Interior, and that the same is void.

It is ordered, adjudged, and decreed by the court that said war-

ranty deed executed by Claudius Tyner on the 17th day of February, 1917, conveying a one-eleventh interest in and to the northwest quarter of the southwest quarter of section thirty-one (31), township eleven (11) north of range five (5) east of the Indian meridian, in Pottawatomie County, Oklahoma, to the defendant, Suda Reynolds, and filed for record in the office of the county clerk of Pottawatomie County, Oklahoma, on the 18th day of April, 1917, be and it is cancelled and held for naught; and that the said defendant, Suda Reynolds, has no right, title, or interest in and to said tract of land by reason of said deed executed as aforesaid.

It is further ordered, adjudged, and decreed that the said Suda Reynolds be, and she is hereby, enjoined from setting up any claim, lien, or title, or claiming any estate, right, title, or interest in and to the land hereinabove described, or to the possession of said tract of land or any part thereof.

It is further ordered, adjudged, and decreed that the defendant, Suda Reynolds, her agents and servants, be, and they are
22 hereby, enjoined from any other or further conveyances of said lands, and from negotiating with or procuring from said heirs any other or further deed, contract, or conveyance of any character touching any of the undivided interests in and to said land or any part of same, except as such may be approved by the Secretary of the Interior; and from in any way interfering with the plaintiff, its agents and servants, in the control, use, and occupancy thereof.

And it is further ordered, adjudged and decreed that the defendant, Suda Reynolds, be enjoined from and after ten days from this date from in any way using, occupying, or cultivating said land, or any party thereof.

And it is further ordered, adjudged, and decreed that the plaintiff have its costs in this case expended and that the same be taxed against the defendant, Suda Reynolds.

To which decree, and every part thereof, the defendant, Suda Reynolds, excepts.

JOHN H. COTTERAL,
District Judge.

O. K., L. D. THRELKELD,
Assistant U. S. Attorney, Solicitor for Plaintiff.

O. K., MARK GOODE,
Solicitor for Defendant.

Endorsed: Filed in District Court May 4, 1917.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

To the Honorable John H. Cotteral, United States District Judge, presiding for the Western District of Oklahoma:

Suda Reynolds, defendant in the above-entitled cause, feeling that she is aggrieved by the ruling and decree of the District Court of

the United States for the Western District of Oklahoma, entered at the March term, 1917, in the above-entitled cause, comes now by her attorneys, Mark Goode and Hal Johnson, and petitions the said court for an order allowing the said defendant to prosecute an appeal to the honorable Circuit Court of Appeals of the United States, for the Eighth Judicial Circuit, under and according to the laws of the United States in that behalf made and provided, for
 23 the reversal of the said decree, and files herewith an assignment of error as required by law; that citation issue according to law, and that the transcript of the record, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

HAL JOHNSON,
 MARK GOODE,
Attorneys for Defendant.

And now, to wit, on May 12th, 1917, it is ordered that the appeal be allowed as prayed for, and it is further ordered that the injunction heretofore allowed herein be stayed pending this appeal, and supersedeas bond therefor is fixed at \$500.00.

JOHN H. COTTERAL,
*United States District Judge of the
 Western District of Oklahoma, Eighth Judicial District.*

Endorsed: Filed in District Court May 12, 1917.

ASSIGNMENT OF ERRORS.

Comes now Suda Reynolds, the defendant in the above-entitled cause, and makes and files this her assignment of errors.

First. The court erred in not dismissing the bill of the plaintiff in this cause for the reason that said plaintiff has no interest in the subject matter of this action and is without capacity to maintain said suit.

Second. The court erred in decreeing that the President extended the trust period as to the land involved in said suit on November 24, 1916, for the reason that the trust period thereon expired by operation of law on the 16th day of September, 1916.

Third. The court erred in decreeing that the United States of America held the land involved in this suit in trust.

Fourth. The court erred in cancelling and holding for naught the deed executed by Claudius Tyner, conveying a one-eleventh interest in and to the

Northwest quarter (1-4) of the southwest (1-4) of section thirty-one (31), township eleven (11) north of range five (5) east I. M., in Pottawatomie County to this defendant.

24 Fifth. The court erred in enjoining the defendant from setting up any claim or title to said land by virtue of said deed.

Sixth. The court erred in enjoining the defendant from interfering with the plaintiff, its agents and servants, in the control, use, and occupancy of said land.

Seventh. The court erred in enjoining the defendant from operating or cultivating said land.

Eighth. The court erred in rendering a decree in favor of the plaintiff and against the defendant.

Ninth. The court erred in not decreeing the trust period or the time during which said lands were held in trust by the United States for the allottee, Stella Washington, and her heirs, expired on the 16th day of September, 1916, and that the title to the land vested in fee in said allottee and her heirs on that date.

MARK GOODE,
HAL JOHNSON,

Attorneys for Defendant, Shawnee, Oklahoma.

Endorsed: Filed in District Court May 12, 1917.

SUPERSEDEAS BOND ON APPEAL.

Know all men by these presents:

That we, Suda Reynolds, of Pottawatomie County, State of Oklahoma, and the United States Fidelity and Guaranty Company, of Baltimore, Maryland, are held and firmly bound unto the United States of America, in the full and just sum of five hundred (\$500.00) dollars to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally by these presents. Sealed with our seals and dated this 10th day of May, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at the March, 1917, term of the District Court of the United States sitting in and for the Western District of 25 the State of Oklahoma, in a suit depending in the said court between the United States of America, as plaintiff, and Suda Reynolds, defendant, an order and decree was rendered against the said Suda Reynolds, and the said Suda Reynolds has obtained an order allowing an appeal, of the said court to reverse the order and decree in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals of the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Suda Reynolds shall prosecute said appeal to effect, and answer all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

SUDA REYNOLDS,
By MARK GOODE, *Her Atty.*
UNITED STATES FIDELITY AND
GUARANTY CO.,
By GEO. E. MCKINNIS,
By EDWARD HOWELL,
Attorney in Fact.

[SEAL.]

Approved by John H. Cotteral, judge of the United States District Court for the Western District of Oklahoma.

Endorsed: Filed in District Court May 12, 1917.

APPELLANTS PRÆCIPE FOR TRANSCRIPT.

To the Clerk of the United States District Court:

You will please cause to be printed the following-named portions of the record in the above-entitled cause:

- 1st. The petition or bill of the plaintiff.
- 2nd. The answer and return of the defendant.
- 3rd. The order and decree.
- 4th. The petition for appeal and the order allowing same.
- 26 5th. The assignments of error.
- 6th. The bond on appeal.
- 7th. The citation.

The defendant, Suda Reynolds, hereby elects to have the record printed under the supervision of the clerk of the United States District Court for the Western District of Oklahoma.

MARK GOODE & HAL JOHNSON,
Attorneys for the Defendant.

Service of a copy of the foregoing præcipe acknowledged this 19th day of May, 1917.

JOHN A. FAIN,
*United States Attorney for the
Western District of Oklahoma.*

Endorsed: Filed in District Court May 19th, 1917.

PRÆCIPE OF U. S. FOR ADDITIONAL PORTIONS OF RECORD.

To the clerk of the above-entitled court:

In addition to the portions of record designated by the defendant herein, you will cause to be included in the transcript of the record on appeal and to be printed, the following:

Order to show cause, with marshal's return.

Chancery subpoena, with marshal's return.

JOHN A. FAIN,
United States Attorney.

Endorsed: Filed in District Court June 5, 1917.

27

CLERK'S CERTIFICATE TO TRANSCRIPT.

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

I, Arnold C. Dolde, clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true, and complete transcript of the pleadings,

record, and proceedings in said court, in case No. 221, in equity, wherein the United States of America is plaintiff and Suda Reynolds is defendant, as full, true, and complete as the said transcript purports to contain and as called for by the præcipes for transcript and designation of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Guthrie in said district, this 7th day of June, A. D. 1917.

ARNOLD C. DOLDE, *Clerk*,

By M. V. HAWS, *Deputy Clerk*.

Seal of the United States District Court, Western District of Oklahoma.

28 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of counsel for appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

SUDA REYNOLDS, APPELLANT,

vs.

UNITED STATES OF AMERICA.

No. 4983.

The clerk will enter my appearance as counsel for the appellant.

MARK GOODE.

HAL JOHNSON.

(Endorsed): Filed in U. S. Circuit Court of Appeals Jul. 5, 1917.

(Appearance of Mr. John A. Fain, United States attorney, as counsel for the appellee.)

The clerk will enter my appearance as counsel for the appellee.

JOHN A. FAIN,

United States Attorney.

(Endorsed): Filed in U. S. Circuit Court of Appeals Sep. 24, 1917.

29 (Appearance of Mr. Lal D. Threlkeld, assistant United States attorney, as counsel for the appellee.)

The clerk will enter my appearance as counsel for the appellee.

LAL D. THRELKELD,

Assistant U. S. Attorney,

Western District of Oklahoma,

Oklahoma City, Oklahoma.

(Endorsed): Filed in U. S. Circuit Court of Appeals Dec. 18, 1917.

(Order of argument.)

December term, 1917.

TUESDAY, DECEMBER 18, 1917.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Mark Goode for appellant, continued by Mr. Lal D. Threlkeld for appellee and the hour for adjournment having arrived, further argument was postponed until tomorrow.

(Order of submission.)

December term, 1917.

WEDNESDAY, DECEMBER 19, 1917.

This cause having been called for further hearing, argument was resumed by Mr. Lal D. Threlkeld for appellee and concluded by Mr. Mark Goode for appellant.

30 Thereupon this cause was submitted to the court on the transcript of the record from said District Court and the briefs of counsel filed herein.

31 (Opinion.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 4983.—December term, A. D. 1917.

SUDA REYNOLDS, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

} Appeal from the District
Court of the United States
for the Western District
of Oklahoma.

Mr. Mark Goode (Mr. Hal Johnson was with him on the brief), for appellant.

Mr. Lal D. Threlkeld, assistant United States attorney (Mr. John A. Fain, United States attorney, was with him on the brief), for appellee.

Before SANBORN, Circuit Judge, and TRIEBER and YOUNG, District Judges.

YOUNG, District Judge, delivered the opinion of the court.

This is an appeal from a decree in which it is adjudged that appellant, Suda Reynolds, defendant below, has no right, title, or interest in a certain tract of land in Pottawatomie County, Oklahoma. The suit was brought by the United States against the appellant as the grantee of one of the heirs of Stella Washington, an Absentee Shawnee allottee, under the act of Congress approved February 8, 1887, as amended by act of Congress approved March 3, 1891.

The allotment of the land in question was made under sections 3 and 5 of the act of February 8, 1887, which sections so far as applicable here, read as follows:

32 "Sec. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office. * * *

"Sec. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void."

Under the authority conferred by these sections, allotments were made by the proper officers, a schedule of the allotments, dated August 7, 1891, was deposited in the General Land Office of the United States, and on the 16th of September, 1891, these allotments were approved by the Secretary of the Interior. The allotment of the land in question to Stella Washington was included in the schedule and in the approval.

Section 5, above quoted, provides for a trust period of twenty-five years, which period could be extended by the President of the United States at his discretion. The preliminary or trust patent was issued to Stella Washington, February 6, 1892.

33 On the 24th of November, 1916, the President made the following order:

"It is hereby ordered under authority contained in section five of the act of February 8, 1887 (24 Stats., 388-9), that the trust periods on the allotments of the Absentee Shawnee and Citizen Pottawatomie Indians in Oklahoma, which trust expires during the calendar year 1917, be, and is hereby, extended for a period of ten years from the dates of expiration, with the exception of the following:"

Then follow numbers of allotments and names of allottees. Stella Washington's name and number do not appear in the list.

Appellant contends that the trust period began on the 16th of September, 1891, the date of the approval of the allotments by the Secretary of the Interior, and that it had expired on the 24th of November, 1916, the date of the President's order. The conveyance to appellant was executed February 17, 1917. The Government contends that the trust period began, so far as the land involved in this case is concerned, on the 6th of February, 1892, the date of the preliminary or trust patent, and that as to such land the trust period expired on the 6th day of February, 1917.

Each allottee became entitled to his preliminary or trust patent upon the approval of the allotments by the Secretary of the Interior. The issuance of the patent was a mere ministerial act. The beginning of the trust period under the act of Congress did not depend upon the time of the performance of the ministerial act by the officers of the General Land Office.

Counsel for the Government contend that the case of the United States v. Rowell (243 U. S., 464) is decisive of the question involved here.

In that case Mr. Justice Van Devanter, speaking for the court, said:

"This is an action in ejectment brought by the United States against James F. Rowell and two others. The land in controversy is a quarter-section—one hundred sixty acres—in an Indian school reserve in Comanche County, Oklahoma.

"Three statutes, all enacted in the same year, must be noticed.

The first of these is a provision in the act of April 4, 1910 (c. 140, 36 Stat., 269, 280), authorizing and directing the Secretary of the Interior 'to enroll and allot' James F. Rowell as an adopted member of the Kiowa Tribe of Indians. The second is the following provision in the act of June 17, 1910 (c. 299, sec. 3, 36 Stat., 533): 'That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee for' the tract in controversy 'to James F. Rowell, a full member of the Kiowa, Comanche, and Apache Tribes of Indians of Oklahoma, who has heretofore received no allotment of land from any source, this to be in lieu of all claims to any allotment of land or money settlement in lieu of an allotment.' And the third is the express repeal of the provision just quoted by the act of December 19, 1910 (c. 3, 36 Stat., 887). The controversy turns chiefly upon the true construction and effect of the provision of June 17 and the constitutional validity of the repealing provision of December 19. * * *

"But it is insisted that the provision of June 17, 1910, was a grant in praesenti and operated in itself to pass the full title to Rowell, and therefore that he had a vested right in the land which the repealing act could not affect. If the premise be right, the conclusion is obviously so. But is the premise right? Of course, a grant may be made by a law as well as by a patent issued pursuant to a law, but whether

a particular law operates in itself as a present grant is always a question of intention. We turn, therefore, to the provision relied upon to ascertain whether it discloses a purpose to make such a grant; that is to say, a purpose to pass the title immediately without awaiting the issue of a patent. We find in it no words of present grant, but only a direction to the Secretary of the Interior 'to issue a patent in fee' to Rowell for the tract described. Only through this express provision for a patent do we learn that a grant is intended, and if it were eliminated nothing having any force would remain. This, we think, shows that a present statutory grant was not intended, but only such a grant as would result from the issue of a patent as directed. The cases cited as making for a different conclusion are plainly distinguished in that they deal with laws or treaties making grants and either containing no provision for a patent or providing for one merely by way of further assurance.

35 "It is also insisted that, by applying for a patent before the provision therefore was repealed, Rowell accepted that provision and thereby acquired a right to have it carried into effect of which he could not be divested by the repealing act consistently with due process of law. But the provision did not call for an acceptance and it is evident that none was contemplated, other than such as would be implied from taking the patent when issued. Besides, statutes of this type are not to be regarded as proposals by the Government to enter into executory contracts, but as laws which are amendable and repealable at the will of Congress, save that rights created by carrying them into effect can not be divested or impaired. (*Gritts v. Fisher*, 224 U. S., 640, 648; *Choate v. Trapp*, 224 U. S., 665, 671; *Sizemore v. Brady*, 235 U. S., 441, 449.) * * *

"For these reasons we conclude that the repealing provision was valid, and that while it did not affect Rowell's status as an adopted member of the tribe or his right to obtain in the usual way an allotment from the tribal lands not specially reserved, it did revoke the special provision made in his behalf in the act of June 17, 1910."

The Supreme Court in that case held that an act of Congress directing that a patent be issued to an individual could be repealed by Congress before the patent itself was delivered and that no constitutional right was violated by the repealing act.

The instant case presents a different question. The right of Stella Washington to a preliminary or trust patent became vested on the day of the approval of her allotment. Her equitable title was then complete and did not depend upon the delivery of the patent. *Balinger v. Fort*, 216 U. S., 240.

The postponement of the performance of the ministerial act of causing a patent to be prepared and signed could not postpone the vesting of the equitable interest in Stella Washington nor could it postpone the beginning of the trust period. In the case of *Monson v. Simonson*, 231 U. S., 341, there is presented an instance in which a specific allotment was by act of Congress relieved from the restrictions imposed during the trust period and the Secretary of

the Interior was authorized to cause to be delivered to the allottee an unconditional patent. In that case the court said:

“It also is plain that, in the absence of further and permissive legislation, the Secretary of the Interior was without authority to shorten the trust period and at once invest the allottee with the title in fee. Recognizing that this was so, and for reasons deemed
36 sufficient, Congress, by the provision in the act of March 3, 1905, clothed the Secretary with such authority with respect to this allotment. That provision says: ‘The Secretary of the Interior is hereby authorized and empowered to issue a patent’ to the allottee. By ‘patent’ is meant, of course, the ultimate patent passing the fee, for the trust patent or allotment certificate had issued sixteen years before. The language of the provision is permissive, not mandatory, and evidently was designed to enable the Secretary to shorten the trust period, by issuing the final patent, if in his judgment it seemed wise, but not to require him to do so. And it is significant that the provision contains no words directly or presently removing the existing restrictions upon alienation, while other kindred provisions in the same act, relating to other allotments, contain the words ‘and all restrictions as to sale, incumbrance, or taxation of said lands are *hereby* removed.’ It hardly can be said that the absence of those words in this instance and their presence in others is not indicative of a difference in meaning and purpose. We conclude that the restrictions upon alienation contained in the act of 1887 were not instantly removed by the act of 1905, but remained in force as to this allotment until the Secretary of the Interior, in the exercise of the authority conferred by the latter act, terminated the trust period by issuing the final patent passing the fee.”

The authorization to deliver a patent to the allottee was permissive and not mandatory as stated by the Supreme Court. The language of section 5 of the act of February 8, 1887, is mandatory. It says: “That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, etc.” The Secretary is given no discretion with regard to the issuance of the patents.

It is urged that departmental construction is opposed to the views herein expressed. Such construction is always entitled to great consideration, but in this instance such construction is, in our judgment, opposed to the plain and unambiguous language of the statute.

There are statutes in which Congress has provided that allotments shall be inalienable for a certain period from the date of the patent.

37 The act of March 2, 1889, 25 Stat., 1013-1014, providing for allotments to the Peorias and Miamies contains the following provision:

“The land so allotted shall not be subject to alienation for twenty-five years from the date of the issuance of the patent therefor, and said lands so allotted and patented shall be exempt from levy, sale, taxation, or forfeiture for a like period of years.”

The act of March 2, 1895, 28 Stat., 907, contains the following provision:

"Provided that said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents."

The act of July 1, 1902, 32 Stat., 641-642, contains the following provisions:

"12. Each member of said tribes shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead.

"13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment. * * *

"16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent."

It thus appears that whenever Congress desires to make the trust period begin with the date of the patent or certificate of allotment, it expressly says so.

In our judgment the trust period expired September 16, 1916, before the issuance of the Executive order of November 24th of the same year. The President had no power to revive the expired period nor to create another period.

38 Congress created a trust period and authorized the President to extend it in his discretion. Congress, however, did not authorize the President in his discretion to create a new trust period. The power to extend a trust period already created is one thing. The power to create a new trust period is an entirely different thing.

It follows that the case must be reversed and remanded with directions to dismiss the bill of complaint. It is so ordered.

Filed May 3, 1918.

TRIEBER, *District Judge*, dissenting.

I concur in the conclusions of the majority of the court that the trust period of twenty-five years began on September 16th, 1891, the date of the approval of the allotment by the Secretary of the Interior, and that it had expired before the 24th day of November, 1916, the date of the President's order extending the trust period for ten years from the date of expiration.

But in view of the decisions of the Supreme Court in *Brader v. James* and *Talley v. Burgess*, opinions filed March 4, 1918, and the

decisions of this court in *David v. Youngken*, filed April 3, 1918, and *Harris v. Bell*, opinion filed April 30, 1918, I am of the opinion that, as the President was authorized by the proviso in section 5 of the act of February 8, 1887, 34 St., 388, to extend the trust period in his discretion, he had the same power to extend it after the expiration of the first trust period as Congress had.

The order by the President extending the trust period having been made before the conveyance of the allotment and without the approval of the Secretary of the Interior, the conveyance was absolutely void.

For this reason I am of the opinion that the decree of the District Court was right and should be affirmed.

Filed May 3, 1918.

39

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

May Term, 1918.

Monday, May 6, 1918.

SUDA REYNOLDS, Appellant,	} No. 4983.
<i>vs.</i>	
UNITED STATES OF AMERICA.	

Appeal from the District Court of the United States for the Western District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said District Court, in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to dismiss the bill of complaint.

MAY 6, 1918.

40

(Clerk's certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Oklahoma as prepared, printed,

and certified by the clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the act of Congress, approved February 13, 1911, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and indorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Suda Reynolds was appellant and the United States of America was appellee, No. 4983, as full, true, and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this twentieth day of July, A. D. 1918.

[SEAL.]

E. E. KOCH,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

41 In the Supreme Court of the United States.

October Term, 1918.

THE UNITED STATES, Petitioner,	}	No. 591.
v.		
SUDA REYNOLDS.		

STIPULATION AS TO RETURN TO WRIT OF CERTIORARI.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writ of certiorari granted therein.

JNO. W. DAVIS,
Solicitor General.
MARK GOODE and
HAL JOHNSON,
Counsel for Respondent.

NOVEMBER 6, 1918.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 4983. Suda Reynolds, appellant, vs. United States of America. Stipulation as to return to writ of certiorari. Filed Nov. 18, 1918. E. E. Koch, clerk.

42 UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

Being informed that there is now pending before you a suit in which Suda Reynolds is appellant, and The United States of America is appellee, No. 4983, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Western District of Oklahoma, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United

43 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirty-first day of October, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

44

RETURN TO WRIT.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Suda Reynolds, appellant, vs. United States of America, No. 4983, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this nineteenth day of November, A. D. 1918.

[SEAL]

E. E. KOCH,

Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) File No. 26677. Supreme Court U. S., October Term, 1918. Term No. 591. The United States of America, Pl'ff in Error, vs. Suda Reynolds. Writ of certiorari and return. Filed November, 27, 1918.